

Trial Court of the Commonwealth District Court Department

Administrative Office Two Center Plaza (Suite 200) Boston, MA 02108-1906 Last Transmittal No. to:
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CLERK-MAGISTRATES: Please distribute a copy of this memorandum to the court's Forms & Systems Coordinator.

MEMORANDUM

To: District Court Judges, Clerk-Magistrates and Chief Probation Officers

FROM: Hon. Lynda M. Connolly, Chief Justice

DATE: January 16, 2008

SUBJECT: Revised c. 209A order forms; New notice with criminal complaints

As you may be aware, the U.S. Department of Justice, through its Office on Violence Against Women, administers grant funds under the Federal Violence Against Women Act (VAWA). Massachusetts receives more than \$9 million in such funds each year, much of it for the support of victim advocate programs throughout the Commonwealth.

Starting this month, continued eligibility for VAWA funding is contingent upon Massachusetts certifying that its "judicial administrative policies and practices include notification to domestic violence offenders of the requirements of [18 U.S.C. § 922(g)(8) & (9)] and any applicable related Federal, State or local laws." 42 U.S.C. § 3796gg-4(e)(1). The two referenced Federal statutes make it a Federal crime to possess a firearm or ammunition: (1) while subject to a qualifying abuse restraining order or (2) after being convicted of a misdemeanor crime of domestic violence.

There are some differences between the Federal and Massachusetts definitions of what constitutes a qualifying abuse restraining order (18 U.S.C. § 922[g][8]), "domestic violence" (42 U.S.C. § 13925[a][6]), and a "misdemeanor crime of domestic violence" (18 U.S.C. § 921[a][33]). For that reason it has been decided that the most practical and effective way to provide the required notification is: (1) to add it to the standard c. 209A order form, and also (2) to add it to the standard criminal complaint form which is given to *every* criminal defendant, rather than trying to provide such notice only to those charged with a qualifying offense.

Beyond knowing that these warnings are being added to our forms in order to fulfill a Federal requirement, it is not necessary that you be familiar with the somewhat complex details of these Federal statutes. However, for those with a particular interest in this area, excerpts from the relevant Federal statutes are reproduced in an appendix to this memorandum.

- 1. **Revised 209A order forms.** The standard two-page "ABUSE PREVENTION ORDER (G.L. c. 209A)" form (FA-2 and FA-2a) has been modified to notify c. 209A defendants that it is a Federal crime to possess a firearm and/or ammunition while a qualifying abuse restraining order is in effect. The following wording has been added to Section A, Paragraph 12 on the first page of the form:
 - Subject to certain exceptions, purchase and/or possession of a firearm and/or ammunition while this order is in effect is a federal crime. 18 U.S.C. §§ 922(g)(8) and 925.

Within the next few weeks each court's Forms & Systems Coordinator will receive a starter supply of the revised two-page "ABUSE PREVENTION ORDER" (FA-2 and FA-2a) forms from our printer, Shamrock Companies. The revised order forms should be put into use as soon as they are received, and all remaining stocks of the current FA-2 and FA-2a order forms (dated 9/95) should be destroyed and discarded. Additional supplies of these forms may be ordered in the usual manner.

Once the revised order forms are available, *only* the revised forms should be used for all new orders. However, it is not necessary to reissue any existing orders on the new forms. Future extensions or modifications of existing orders should be recorded on the second page of the previously-issued order if space is available to do so. If there is no longer space to record a further extension or modification, you should record it on a *new* "Page 2" (FA-2a) form and then attach that to the existing 2-page order.

In addition to the change outlined above that has been made to fulfill the Federal notice requirement, three other improvements have been made to the wording of the order forms:

• Extensions and modifications. On page 2 of the order form, the three sections that are used for extending and modifying restraining orders have been revised. Currently those three sections are labeled "C. PRIOR COURT ORDER EXTENDED," "D. FURTHER EXTENSION" and "E. PRIOR COURT ORDER MODIFIED," respectively. This distinction between "extensions," "further extensions" and "modifications" has sometimes resulted in a confusing chronology, since the last order recorded on the page has not always been the most recent. Sometimes it has been difficult to determine which is the most current order, or which order has been extended.

Sections C, D and E have been revised so that all three sections are labeled "MODIFICATION" and their formats are identical. Now, whenever an order is extended or otherwise modified, the judge should simply complete the next blank section – whether Section C, D or E. This should make the sequence of extensions or other modifications clearer. (The use of Section F for vacating orders is unchanged.)

• Continuation of firearms surrender orders. The language in Sections C, D and E relating to the continued surrender of firearms has been rephrased to state more clearly that if this box is checked, the firearms surrender order continues in effect. The new wording is:

Firearm surrender order continued.	The items surrendered under	paragraph 12 will NOT be
returned since doing so would prese	ent a likelihood of abuse to the	plaintiff.

• Order expires upon plaintiff's failure to appear. The first sentence in the box of instructions at the bottom of page 1 of the order form has been revised to indicate that, if the plaintiff does not appear at scheduled hearings, the order will expire. The prior wording indicated, somewhat ambiguously, that if the plaintiff did not appear "this Order may be vacated." The new wording is:

The Plaintiff must appear at scheduled hearings, or this Order will expire.

Copies of the text of the revised order forms are attached.

Please note that these revisions do not affect the two-page "COMPLAINT FOR PROTECTION FROM ABUSE (G.L. C. 209A)" (FA-1 and FA-1a) forms, which have not changed.

2. **New notice with criminal complaints.** You will shortly begin to see at the bottom of every new criminal complaint that is printed using the MassCourts Lite computer system a new notice to the defendant, which reads as follows:

Notice to Defendant: 42 U.S.C. § 3796gg-4(e) requires this notice: If you are convicted of a misdemeanor crime of domestic violence you may be prohibited permanently from purchasing and/or possessing a firearm and/or ammunition pursuant to 18 U.S.C. § 922(g)(9) and other applicable related Federal, State, or local laws.

I want to emphasize that this notice is being added to the standard MassCourts criminal complaint form *only* so that Massachusetts remains eligible for Federal VAWA funds. As explained above, Federal law now conditions such eligibility on our notifying in some manner the subset of criminal defendants who are "domestic violence offenders" about this particular collateral consequence of being convicted of a "misdemeanor crime of domestic violence" (as defined in Federal law).

The notice does not purport to inform the defendant of all possible collateral effects of domestic violence or other convictions. (For example, 18 U.S.C. §§ 921(a)(20) and 922(g) also prohibit a person convicted of *any* Massachusetts crime punishable by imprisonment for more than two years from purchasing or possessing a firearm or ammunition.)

This notice is not required by, nor does it implicate, any of the defendant's rights with respect to the criminal offenses charged in the complaint. It is not expected that judges will explain or elaborate on this notice or refer to it in their plea colloquies. Both Federal and Massachusetts law are clear that judges are *not* required to inform defendants about possible collateral consequences of a plea, except for the requirements of the alien warning statute (G.L. c. 278, § 29D) and Mass. R. Crim. P. 12(c)(3). See *United States v. Bouthot*, 878 F.2d 1506 (1st Cir. 1989) (state judge taking plea need not explain potential Federal firearms charges, which are collateral consequences); *Commonwealth v. Medeiros*, 48 Mass. App. Ct. 374, 720 N.E.2d 845 (1999) (except for compliance with alien warning statute, judge taking plea need not explain collateral consequences). This written notice simply fulfills a Federal funding requirement that we point out, to those defendants to whom it applies, one collateral consequence of being convicted of a particular type of offense.

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In those courts that do not use the MassCourts Lite computer system to prepare their criminal complaints, such notice will not currently appear on their printed criminal complaints. Until further notice, in those courts criminal defendants should be provided such notification by posting the attached notice in a prominent place in both the clerk-magistrate's office and the probation office. This applies only to the five divisions which do not currently utilize the MassCourts Lite system – namely, the Barnstable, Brockton, Woburn, Worcester and Springfield district courts.

If you have any questions, please direct them to Deputy General Counsel Ellen S. Shapiro in this office (<u>ellen.shapiro@jud.state.ma.us</u> or 617-788-8810).

APPENDIX

The Federal Violence Against Women Act (VAWA) was originally adopted in 1994 (Title IV, §§ 40001–40703 of P.L. 103-322, 108 Stat. 1796) and was most recently reauthorized in 2005 (P.L. 109-162, 119 Stat. 2960).

18 U.S.C. § 921

DEFINITIONS

(a) As used in this chapter—

- (20) The term "crime punishable by imprisonment for a term exceeding one year" does not include—
- (A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or
- (B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

- (32) The term "intimate partner" means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.
 - (A) [T]he term "misdemeanor crime of domestic violence" means an offense that—
 - (i) is a misdemeanor under Federal, State, or Tribal law; and
- (ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.
 - (B) (i) A person shall not be considered to have been convicted of such an offense for purposes of this chapter, unless— (I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in

the case; and

- (II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either
 - (aa) the case was tried by a jury, or
- (bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.
- (ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

18 U.S.C. § 922(g)

It shall be unlawful for any person—

(1) who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year; [or]

(8) who is subject to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

APPENDIX

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- (B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
- (C) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or
- (9) who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U.S.C. § 925

[18 U.S.C. § 925 lists certain exceptions to the firearms prohibitions found in 18 U.S.C. §§ 921-931.]

42 U.S.C. § 3796gg-2

DEFINITIONS AND GRANT CONDITIONS. In this subchapter the definitions and grant conditions in section 13925 of this title shall apply.

42 U.S.C. § 3796gg-4(e)

JUDICIAL NOTIFICATION.—

- (1) IN GENERAL.—A State or unit of local government shall not be entitled to funds under this part unless the State or unit of local government—
- (A) certifies that its judicial administrative policies and practices include notification to domestic violence offenders of the requirements delineated in section 922(g)(8) and (g)(9) of title 18, United States Code, and any applicable related Federal, State, or local laws;

42 U.S.C. § 13925(a)

DEFINITIONS.—In this title:

(6) DOMESTIC VIOLENCE.—The term "domestic violence" includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

"MISDEMEANOR"

Under Federal law, a **misdemeanor** is an offense punishable by imprisonment for more than 5 days but not more than one year. 18 U.S.C. § 3559(a). By contrast, under Massachusetts law, a misdemeanor is an offense that is not punishable by a state prison sentence – effectively, an offense that is not punishable by imprisonment for more than 2½ years. See G.L. c. 274, § 1 and c. 279, § 23.

Notice to Criminal Defendants:

42 U.S.C. § 3796gg-4(e) requires this notice:

If you are convicted of a misdemeanor crime of domestic violence you may be prohibited permanently from purchasing and/or possessing a firearm and/or ammunition pursuant to 18 U.S.C. § 922(g)(9) and other applicable related Federal, State, or local laws.

	ABUSE PREVENTION ORDER (G.L. c. 209A) Page 1 of 2		DOCKET No.			TRIAL COURT	OF N	IASS	ACHUSETTS
PLAIN	, , ,	fenda	ant's Name and Address		Alias	l s, if any			The state of the s
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NAME	& ADDRESS OF COURT E				Date	of Birth	Sex	□ м □ F	Place of Birth
	т.				SS#	!			Daytime Phone # ()
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	F		's Maiden Name (First & L	.ast)					
	O. Fa	ather'	s Name (First & Last)						
	VIOLATION OF THIS ORDER I								
A. T	HE COURT HAS ISSUED THE FOLL(OW	NG ORDERS TO	TH	E DEFENDA	NT: (only those item	s ched	cked sh	all apply)
th	his Order was issued without advance notice be ne Court determined that there is a substantial like		od		communicated by t	elephone from the Judge		d below	to:
_	of immediate danger of abuse. Police Dept Police Officer 1. YOU ARE ORDERED NOT TO ABUSE THE PLAINTIFF by harming, threatening or attempting to harm the Plaintiff physically or by placing the								
	Plaintiff in fear of imminent serious physica					1868/8597 ,385	37535		• •
□ 2	2. YOU ARE ORDERED NOT TO CONTACT 1 in this section, either in person, by telepho from the Plaintiff even if the Plaintiff seen sheriff or other authorized officer when req	ne, ns to	n writing or otherwise allow or request co	. eit	her directly or the	rrough someone els	e. and	to sta	v at least vards
□ 3	S. YOU ARE ORDERED TO IMMEDIATELY L		E AND STAY AWAY						
	also ORDERS you (a) to surrender any k occupant, (c) not to shut off or cause to Plaintiff's right to possess that residence, e	be :	to that residence to the shut off any utilities o	he P r ma	laintiff, (b) not all delivery to the	to damage any belo	ngings	of the	may reside. The Court e Plaintiff or any other e in any way with the
	If this box is checked, the Court also O l family dwelling in which the Plaintiff's re	RDE	RS you to immediately	4	J	way from the entire ap	oartme	nt build	ling or other multiple
□ 4	PLAINTIFF'S ADDRESS IMPOUNDED. The C Register of Probate so that it is not disclosed	Cour	ORDERS that the add	dress	of the Plaintiff's	residence is to be im	npound	ded by	the Clerk-Magistrate or
_	5. YOU ARE ORDERED TO STAY AWAY FROM S. CUSTODY OF THE FOLLOWING CHILDREN	и тн	E PLAINTIFF'S WOR	KPL	ACE located at				
$\frac{\square}{N}$	5. CUSTODY OF THE FOLLOWING CHILDREN		AWARDED TO THE PI	N					_
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7	. YOU ARE ORDERED NOT TO CONTACT THeither in person, by telephone, in writing or cyou receive written permission from the C You are also ordered to stay away from the C	ther ourt	wise, either directly or to do otherwise.	throu	igh someone els	se, and to stay at leas	TIFF'S t	CUST yard	ODY LISTED BELOW, ds away from them unless
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E	B. VISITATION WITH THE CHILDREN LISTED IN		TION 6 IS PERMITTED	E	I V AS FOLLOW	S (may be ordered by	v Proh	ate and	
	. VISITATION WITH THE GREEN EIGHTS AV	-	THE TENT OF LIMIT 125			o (may be ordered b	y 1 101		
	☐ Visitation is only allowed if supervised and	d in	the presence of			at th	e follo	wing tir	mes
	☐ Transportation of children to and from this		tation is to be done by	1	to be paid for by			/+h:+d	party), and not by you.
	☐ You may contact the Plaintiff by telephone							_(uiii u	party), and not by you.
	D. YOU ARE ORDERED TO PAY SUPPORT for or per, beginning	□ t	ne Plaintiff and \square you	r chil	d or children list				
	Massachusetts Department of Revenue			Piaii	ılın 🗀 inrougn	the Probation Office	OI IIIIS	Court	□ through the
□ 10	. YOU MAY PICK UP YOUR PERSONAL BELO	-	-	of po	lice at a time agi	reed by the Plaintiff.			
□11	. YOU ARE ORDERED TO COMPENSATE THE	E PL	AINTIFF for \$		in losses suff	ered as a direct resul	t of the	e abuse	e, to be paid in full on
	or before, 20 direct								
□ 12	there is a substantial likelihood of P your FID card, if any, are suspended immed	F IM olice	MEDIATE DANGER O Department all guns,	F AE amm	BUSE. YOU ARI nunition, gun lice	E ORDERED TO IMN nses and FID cards.	IEDIA Your li	TELY S cense f	SURRENDER to the to carry a gun, if any, and
	 You must immediately surrender the items list Subject to certain exceptions, purchase and/ 18 U.S.C. §§ 922(g)(8) and 925. 	sted	above, and also compl	y wit and/	th all other Order or ammunition w	rs in this case. hile this order is in ef	fect is	a feder	al crime.
∐13	3. YOU ARE ALSO ORDERED								

The Plaintiff must appear at scheduled hearings, or this Order will expire. The Defendant may appear, with or without attorney, to oppose any extension or modification of this Order. If the Defendant does not appear, the Order may be extended or modified as determined by the Judge. For good cause, either the Plaintiff or the Defendant may request the Court to modify this Order before its scheduled expiration date.

FA 2 (1/08)

ABUSE PREVENTION ORDER (G.L. c. 209A) Page 2 of 2

DOCKET No.

TRIAL COURT OF MASSACHUSETTS

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14. Police reports are on file at thePolice Department. 15. OUTSTANDING WARRANTS FOR THE DEFENDANT'S ARREST:(DOCKET #s)(PCF #)									
	□ 16. An imminent threat of bodily injury exists to the petitioner. Notice issued to								
 ■ B. NOTICE TO LAW ENFORCEMENT. 1. An appropriate law enforcement officer shall serve upon the Defendant in hand a copy of the Complaint and a certified copy of this Order (and Summons), and make return of service to this Court. If this box is checked □, service may instead be made by leaving such copies at the Defendant's address shown on Page 1 but only if the officer is unable to deliver such copies in hand to the Defendant. 2. Defendant Information Form accompanies this Order. 3. Defendant has been served in hand by the Court's designee: Name									
DATE OF ORDER TIME OF ORDER A.M. EXPIRATION DATE OF ORDER NEXT HEARING DATE:									
The above and any s	subsequent Orders ex	☐ P.M. pire on the e	expiration dates indica	at 4 P.M.	at A	TO THE PARTY OF TH	n Courtroom		
on whether to continu	ue and/or modify Orde		ld on dates and times			<u> </u>			
C. MODIFIC									
		•			did not appear and the be MODIFIED as foll	VERTIES.	□ appeared □	did not appear.	
					_ De MODIFIED as ION ER MODIFICATION(S	***************************************			
Firearm surren	nder order continued	. The items	surrendered under p	aragraph 12 will	NOT be returned sinc	e doing so wou	ld present a likeli	hood of abuse to	
the plaintiff.									
Date of this Modifica	ation:	Expiration	date of this order:		Signature/Name of Judge:)) ~		
Time of	A.N		Hearing Date:		at A.M	P.M. Cou	ırtroom		
Modification:		1.	-	Name and Associated	- Common of the				
□ D. MODIFICATION. □ This modification was issued after a hearing at which the Plaintiff □ appeared □ did not appear and the Defendant □ appeared □ did not appear. The Court has ORDERED that the prior order issued on, 20 be MODIFIED as follows: □ The expiration date of this order has been EXTENDED (See Below) □ OTHER MODIFICATION(S)									
	nder order continued	. The items	surrendered under p	paragraph 12 will	NOT be returned sinc	e doing so wou	ld present a likeli	hood of abuse to	
the plaintiff. Date of this Modifica	ation:	Expiration	date of this order:		Signature/Name of Judge:				
Time of Modification:	□ A.N. □ P.N	Next	Hearing Date:		at \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \	. P.M. Cou	ırtroom		
□ E. MODIFICATION. □ This modification was issued after a hearing at which the Plaintiff □ appeared □ did not appear and the Defendant □ appeared □ did not appear. The Court has ORDERED that the prior order issued on, 20 be MODIFIED as follows: □ The expiration date of this order has been EXTENDED (See Below) □ OTHER MODIFICATION(S) Firearm surrender order continued. The items surrendered under paragraph 12 will NOT be returned since doing so would present a likelihood of abuse to the plaintiff.									
Date of this Modification: Expiration date of this order: Signature/Name of Judge:									
Time of A.M. Next Hearing Date: at A.M. P.M. Courtroom									
F. PRIOR COURT ORDER VACATED. This Court's prior Order is vacated. Law enforcement agencies shall destroy all records of such Order.									
☐ VACATED AT PLAINTIFF'S REQUEST. SIGNATURE/NAME OF JUDGE					OF ORDER TIME OF ORDER A.M. P.M.				
WITNESS - FIRST	OR CHIEF JUSTICE			A true	A true copy, attest (Asst.) Clerk Magistrate/ (Asst.) Register of Probate				